

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 36159/098001; P5944	
	Application Number 09/977,715-Conf. #3306	Filed October 12, 2001	
	First Named Inventor David S. Allison		
	Art Unit 2194	Examiner L. B. Zhen	
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="width: 60%;"> <p><input type="checkbox"/> applicant /inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>46,479</u></p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____</p> </div> <div style="width: 35%; text-align: center;"> <p>_____ /Robert P. Lord/ Signature</p> <p>_____ Robert P. Lord Typed or printed name</p> <p>_____ (713) 228-8600 Telephone number</p> <p>_____ July 18, 2008 Date</p> </div> </div> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below".</p>			
<input type="checkbox"/> "Total of <u>1</u> forms are submitted.			

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
David S. Allison

Confirmation No.: 3306

Application No.: 09/977,715

Art Unit: 2194

Filed: October 12, 2001

Examiner: L. B. Zhen

For: METHOD AND APPARATUS FOR
COMMUNICATION TO THREADS OF
CONTROL THROUGH STREAMS

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Authority

Applicant's claims have been rejected at least twice, so filing a Notice of Appeal with proper fee and a pre-appeal brief request for review is proper. *See*, 35 USC § 134.

Disposition of Claims

Claims 23, 26-30, and 33-40 are pending in the present application. Claims 23 and 30 are independent. The remaining claims depend, either directly or indirectly, from claims 23 and 30.

Remarks

Claims 23, 26-30, and 33-40 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,131,183 (hereinafter "Tyler"), in view of U.S. Patent No. 6,842,898 (hereinafter "Carlson"). In maintaining the above rejection and issuing both a final

Office Action and an Advisory Action, Applicant respectfully asserts that the Examiner has failed to satisfy the requirements set out in MPEP §§ 2142 and 2143(A).

MPEP § 2143 states that “[t]he key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in KSR noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit.” Further, when combining prior art elements, the Examiner “must articulate the following: (1) a finding that the prior art included each element claimed, although not necessarily in a single prior art reference, with the only difference between the claimed invention and the prior art being the lack of actual combination of the elements in a single prior art reference...” See, MPEP § 2143(A).

If the Examiner does not produce a *prima facie* case, Applicant is under no obligation to submit evidence of non-obviousness. The initial evaluation of *prima facie* obviousness thus relieves both the Examiner and Applicant from evaluating evidence beyond the prior art and the evidence in the specification as filed until the art has been shown to suggest the claimed invention. See, MPEP § 2142.

Independent claim 23 explicitly requires, at least, (i) a first data value be written from a first thread to a second thread; (ii) said first data value be written to the second thread using the output stream of the first thread and the input stream of the second thread; (iii) a second data value be generated by the second thread based on the first value; (iv) said second data value be written from the second thread to the first thread; and (v) said second data value be written to the first thread using the output stream of the second thread and the input stream of the first thread. Independent claim 30 has similar requirements.

Tyler discloses a controller having a stdin stream, a stdout stream, a childWrite stream, and a childRead stream. Tyler further discloses a program having a stdin stream and a stdout stream. The childWrite stream and the childRead stream of the controller are attached to the stdin stream and the stdout stream, respectively, of the program. Further still, Tyler discloses both said controller and said program create independent connections to an X-server. *See*, Tyler at Figure 6; column 4, lines 65-68; and at column 5, lines 1-10.

In addition, Tyler discloses a wakeup subroutine which sends a command (hereinafter “command A”) from the controller to the program. In response to receiving command A, the program sends a command (hereinafter “command B”) to the X-server to delete a dummy window. The wakeup subroutine then repeatedly polls the X-server to determine if the dummy window is still present. As a result of the polling, information (hereinafter “polling result”) is returned to the subroutine. *See*, Tyler at Figure 6 and at column 6, lines 20-30.

The Examiner is attempting to equate the wakeup subroutine and command A, as disclosed by Tyler, with the first thread and the first value, respectively, as recited by the independent claims. *See*, Advisory Action dated June 4, 2008 (hereinafter “Advisory”) at page 3. The Examiner is also attempting to equate the program and command B, as disclosed by Tyler, with the second thread and the second value, respectively, as recited by the independent claims. *See*, Final Office Action dated March 18, 2008, at page 3, lines 1, 2, and 12-15. Applicant respectfully asserts these associations require mischaracterizing the prior art, which is wholly improper.

As discussed above, the independent claims explicitly require the second value be written to the first thread. However, Tyler discloses command B (*i.e.*, the second value) is written to the X-server, *not* to the subroutine (*i.e.*, first thread). In other words, Tyler’s teachings

and the Examiner's contentions squarely contradict what is recited by the independent claims and fail to satisfy at least requirement (iv) of the independent claims. Further, it is clear the stdout stream of the program (*i.e.*, second thread) is not used to connect the program to the X-server. *See*, Tyler at Figure 6. Accordingly, it follows that command B is not written to the subroutine (*i.e.*, first thread) using the stout stream of the program (*i.e.*, second thread). In other words, Tyler's teachings and the Examiner's contentions also fail to satisfy at least requirement (v) of the independent claims.

There is some indication the Examiner may be attempting to equate the polling result, as disclosed by Tyler, with the second value, as recited by the independent claims. *See*, Advisory at page 3. Applicant respectfully asserts this association is also improper. As an initial matter, the polling result (*i.e.*, second value) is generated by the X-server, not by the program (*i.e.*, second thread). Thus, Tyler's teachings still squarely contradict what is recited by the independent claims and fail to satisfy at least requirement (iii). Further, it is clear Tyler's controller has a direct connection the X-server that is independent of the stdout stream of the program (*i.e.*, second thread). Accordingly, the polling result (*i.e.*, second value) is written to the subroutine (*i.e.*, first thread) without using the stdout stream, squarely contradicting the independent claims. In other words, Tyler's teachings and the Examiner's contentions also fail to satisfy at least requirement (v) of the independent claims.

Carlson teaches communication between threads comprising a program counter, a stack, a state, and a register set. *See*, Carlson at column 4, lines 42-65. However, Carlson does not teach what Tyler lacks. Specifically, Carlson, like Tyler, also does not teach or suggest creating a second value by a second thread, and then writing the second value to a first thread

using the input/output streams of the first thread and the second thread. Thus, Carlson, like Tyler, also cannot satisfy at least requirements (iii), (iv), and (v) of the independent claims.

In view of the above, Tyler and Carlson, whether viewed separately or in combination, do not teach or suggest each and every limitation of independent claims 23 and 30. Accordingly, the cited art and the Examiner's contentions do not support the rejection of independent claims 23 and 30. Claims 26-29 and 33-40 depend, either directly or indirectly, from claims 23 and 30. Accordingly, the cited art and the Examiner's contentions also do not support the rejection of claims 26-29 and 33-40, and withdrawal of this rejection is respectfully requested.

Conclusion

In view of the above, the Examiner has failed to satisfy the requirements set out in MPEP §§ 2143 and 2142. Specifically, the Examiner has failed to show the prior art reference (or references when combined) teach or suggest all the limitations of independent claims 23 and 30. Accordingly, a favorable decision from the panel is respectfully requested. Please apply any charges not covered, or any credits, to Deposit Account 50-0591 (Reference Number 36159/098001).

Dated: July 18, 2008

Respectfully submitted,

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